

REFERENCE TITLE: joint; several liability; criminal offenses

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2660

Introduced by
Representative Nichols

AN ACT

AMENDING SECTION 12-2506, ARIZONA REVISED STATUTES; RELATING TO JOINT AND SEVERAL LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-2506, Arizona Revised Statutes, is amended to
3 read:

4 12-2506. Joint and several liability abolished; exception;
5 apportionment of degrees of fault; definitions

6 A. In an action for personal injury, property damage or wrongful
7 death, the liability of each defendant for damages is several only and is not
8 joint, except as otherwise provided in this section. Each defendant is
9 liable only for the amount of damages allocated to that defendant in direct
10 proportion to that defendant's percentage of fault, and a separate judgment
11 shall be entered against the defendant for that amount. To determine the
12 amount of judgment to be entered against each defendant, the trier of fact
13 shall multiply the total amount of damages recoverable by the plaintiff by
14 the percentage of each defendant's fault, and that amount is the maximum
15 recoverable against the defendant.

16 B. In assessing percentages of fault the trier of fact shall consider
17 the fault of all persons who contributed to the alleged injury, death or
18 damage to property, regardless of whether the person was, or could have been,
19 named as a party to the suit. Negligence or fault of a nonparty may be
20 considered if the plaintiff entered into a settlement agreement with the
21 nonparty or if the defending party gives notice before trial, in accordance
22 with requirements established by court rule, that a nonparty was wholly or
23 partially at fault. Assessments of percentages of fault for nonparties are
24 used only as a vehicle for accurately determining the fault of the named
25 parties. Assessment of fault against nonparties does not subject any
26 nonparty to liability in this or any other action, and it may not be
27 introduced as evidence of liability in any action.

28 C. The relative degree of fault of the claimant, and the relative
29 degrees of fault of all defendants and nonparties, shall be determined and
30 apportioned as a whole at one time by the trier of fact. If two or more
31 claimants have independent claims, a separate determination and apportionment
32 of the relative degrees of fault of the respective parties, and any
33 nonparties at fault, shall be made with respect to each of the independent
34 claims.

35 D. The liability of each defendant is several only and is not joint,
36 except that a party is responsible for the fault of another person, or for
37 payment of the proportionate share of another person, if any of the following
38 applies:

- 39 1. Both the party and the other person were acting in concert.
- 40 2. The other person was acting as an agent or servant of the party.
- 41 3. The party's liability for the fault of another person arises out of
42 a duty created by the federal employers' liability act, (45 United States
43 Code section 51).

44 4. THE PARTY PRODUCES OR PUBLISHES WRITTEN, AUDIO, VIDEO OR DIGITAL
45 MATERIAL AND:

1 (a) ALL OF THE FOLLOWING APPLY:

2 (i) THE MATERIAL IS DANGEROUS. FOR THE PURPOSES OF THIS ITEM,
3 "DANGEROUS" MEANS MATERIAL THAT IS FOUND BY CLEAR AND CONVINCING EVIDENCE TO
4 PROMOTE OR PERSUADE ANOTHER PERSON TO COMMIT TERRORISM OR A FELONY ACT.

5 (ii) THE PARTY BENEFITED FROM THE MATERIAL'S DISTRIBUTION.

6 (iii) THE MATERIAL WAS A CAUSE IN ANOTHER PERSON COMMITTING TERRORISM
7 OR A FELONY ACT.

8 (b) NOTWITHSTANDING SECTIONS 12-505 AND 12-542, THE STATUTE OF
9 LIMITATIONS FOR A PARTY WHO IS RESPONSIBLE PURSUANT TO THIS PARAGRAPH IS TWO
10 YEARS AFTER THE FINAL DISPOSITION OF THE CRIMINAL PROCEEDINGS.

11 E. If a defendant is found jointly and severally liable pursuant to
12 subsection D, the defendant has the right to contribution pursuant to this
13 chapter. In an action arising out of a duty created by the federal
14 employers' liability act (45 United States Code section 51), a person or
15 entity, other than an employee of the defendant, whose negligence or fault
16 caused or contributed to the plaintiff's injury or death shall contribute to
17 the defendant pursuant to this chapter. An action for contribution shall be
18 adjudicated and determined by the same trier of fact that adjudicates and
19 determines the action for the plaintiff's injury or death. The trier of fact
20 shall adjudicate and determine an action for contribution after the court
21 enters a judgment for the plaintiff's injury or death. On motion before the
22 conclusion of the trial, the plaintiff is entitled to an award against the
23 defendant for actual expenses the plaintiff incurred as a direct result of
24 the defendant's claim for contribution. The expenses shall include
25 reasonable attorney fees as determined by the court.

26 F. For the purposes of this section:

27 1. "Acting in concert" means entering into a conscious agreement to
28 pursue a common plan or design to commit an intentional tort and actively
29 taking part in that intentional tort. Acting in concert does not apply to
30 any person whose conduct was negligent in any of its degrees rather than
31 intentional. A person's conduct that provides substantial assistance to one
32 committing an intentional tort does not constitute acting in concert if the
33 person has not consciously agreed with the other to commit the intentional
34 tort.

35 2. "Fault" means an actionable breach of legal duty, act or omission
36 proximately causing or contributing to injury or damages sustained by a
37 person seeking recovery, including negligence in all of its degrees,
38 contributory negligence, assumption of risk, strict liability, breach of
39 express or implied warranty of a product, products liability and misuse,
40 modification or abuse of a product.